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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,641	07/14/2005	Ole Jan Myhre	0001996/3053USU	3105

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OHLANDT, GREELEY, RUGGIERO & PERLE, LLP  
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STAMFORD, CT 06901

EXAMINER
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ZEMEL, IRINA SOPJIA

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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07/20/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/517,641	<b>Applicant(s)</b> MYHRE ET AL.	
	<b>Examiner</b> Irina S. Zemel	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-8 and 11-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,096,014 to Haffner et al., (hereinafter "Haffner") in combination with WO 99/41310 to Borealis Polymer OY, (hereinafter "Borealis '310"). This rejection is issued as either Haffner in view of Borealis or Borealis in view of Haffner.

The rejection stands as per reasons of record.

It is noted, the in both previous office actions, the alternative rejection were issued, i.e., using either Haffner or Borealis as the primary reference. See specifically, Office action Dated 3-27-2008, page 4, third full paragraph.

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,096,014 to Haffner et al., (hereinafter "Haffner") in combination with WO 99/41310 to Borealis Polymer OY, (hereinafter "Borealis '310") as applied to claim 1 above and further in view of US patent 5,008,296 to Antoon et al., (hereinafter "Antoon")

The rejection stands as per reasons of record.

### ***Response to Arguments***

Applicant's arguments filed 5-26-2009 have been fully considered but they are not persuasive. Once again, it is pointed out that the applicants arguments are directed to each reference individually, rather than combined teachings of the references.

The applicants attack the rejection and remarks made in the previous office action that are either based on individual teachings of reference or by mis-interpreting the actual rejection.

The examiner wishes to emphasize that the rejection does not propose to substitute specific Ziegler Natta polyolefins of comparative example, rather the examiner proposed to substitute any of the polyolefins as disclosed in the invention of Haffner with bi-modal polyolefins disclosed in Borealis, including those exemplified in the preferred or comparative examples to realize the advantages that blown films made from bi-modal polyolefins of Borealis offer. .

The applicants, once again, concentrate on the preferred embodiments of Haffner as desirable, comparative examples as being "teaching away" from using Ziegler Natta catalyzed polyolefins, but most importantly, as discussed above, on teachings of Borealis as not teaching specific advantages such as improved elongation. Again, it is the examiner's position that the applicants concentrate on negative teachings and teachings of references taken alone and not combined teachings of the two cited references.

Specifically, the applicants state that Haffner teaches use of metallocene catalyzed polyolefins and not Ziegler Natta catalyzed polyolefins. The examiner already stated on the record that she does not dispute the fact that the **preferred** (or

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inventive) embodiments, and all claimed embodiments, of Haffner, indeed, concentrate on the advantages of using metallocene polymerized catalysts. However, as previously discussed, the reference also exemplifies use of non-metallocene catalyzed (Ziegler Natta) polyolefins. Again, as previously discussed, while some of the properties of the films containing Ziegler Natta polyolefins are inferior as compared to the preferred metallocene polyolefins the other properties are better. More importantly – the films containing Ziegler Natta polyolefins are obtained and tested Haffner. This hardly constitutes teaching away. This constitutes, for an ordinary artisan, an expressed teachings that such films can, in fact, be obtained, exhibit disclosed properties, and, while may not be desirable for applications requiring high elongation properties in cross-machine direction, are still very usable and desirable for application requiring high WVTR and CD tensile strength. In addition, it is a common knowledge in the art that Ziegler Natta polyolefins are cheaper than metallocene polyolefins.

Thus, it is very clear from the teachings of the Haffner reference that exemplified non metallocene polyolefin based films do not constitute teaching away and one of ordinary skills in the art would clearly appreciate the advantages and disadvantages of using such films, rather than completely "giving up" on them as not usable simply because they exhibit one property that is not desirable for a particular application.

The applicants state that film B, i.e., film utilizing Ziegler Natta polyolefins as disclosed by Haffner “ has an elongation of 21%! It is an order of magnitude worse than any other film in Haffner. Its CD tensile strength is the 2nd lowest reported. Film B does not have good elongation and does not have good tensile strength. It is the worst

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performing film in Haffner by far yet the Office Action would have us start from this film and change it to arrive at the claimed invention! Why would one of ordinary skill in the art do that?" To answer this question the applicants are invited to take a closer look at the properties of referenced film B. It is clear, that it does not perform well as far as elongation in TD direction. However, the emphasized by the applicants CD tensile strength which "is the 2nd lowest reported", is 2nd lowest to the most preferred embodiment disclosed by the applicants, i.e., Film A, the very invention disclosed by Haffner, also referred to as "the film of the present invention" in Haffner reference (column 15, lines 5-6). In other words, film B exhibits superior tensile strength as compared to "the film of the present invention", film A. In addition, it is noted that film B exhibit the best WVTR properties as compared to any other examples listed in table II of Haffner. Those are the teachings one of ordinary skill in the art finds as expressly disclosed in the Haffner reference when he reads the Haffner reference as a whole.

The applicants further state that the "Office Action has also not offered any explanation of why the person skilled in the art would change from the unimodal polymers of Haffner to the bimodal polymers of Borealis. It is conceded that bimodal polymers were known when the Haffner application was filed and known when our application was filed, but Haffner does not use them. Where is the motivation to change the unimodal polymer in Haffner to a bimodal polymer? There has to be some reason for one of ordinary skill in the art to make a combination. The skilled person must have some reason to expect that changing to a bimodal material would provide benefit. Where is that reason?"

The Office Action expressly stated why the person skilled in the art would change from the unimodal polymers of Haffner to the bimodal polymers of Borealis – to realize the advantages offered by the such polymers when used for stretched films.

The examiner does not wish to comment on why Haffner did not use bi-modal polymers even though they were known at the time Haffner made his invention, as it is COMPLETELY irrelevant to the prosecution of the instant application.

And again, the motivation to use bi-modal polyolefins of Borealis in the invention of Haffner was clearly provided in the previous office actions.

Specifically it was discussed in the previous office actions and pointed out again, that the Borealis '310 reference discloses blown films obtained from the bi-modal Ziegler Natta polyolefins which exhibit exceptionally good properties such as tear strength and yield. It would have been obvious for an ordinary artisan to utilize the bi-modal polyethylene composition of Borealis '310 as the starting materials in the production of breathable films disclosed by Haffner since those composition exhibit improved tensile strength, the property highly desired for the production of films of Haffner (see Haffner, table A, for example), and in addition result in advantages such as homogeneous films, significantly improved tear strength and significantly improved impact properties, i.e., a host of improved properties for applications where such properties are desired.

It is true that Borealis does not compare properties of unimodal Ziegler Natta polyolefins with bimodal Ziegler Natta polyolefins. However, no such comparison is needed for an ordinary artisan to recognize that the bi-modal polyolefins of Borealis

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exhibit exceptionally good characteristics just based on the data reported by those polymers alone and not in comparison with anything else. In other words, an ordinary artisan would be able to assess the properties (good, bad, average) of a polyolefin or any other common polymer without comparing it to other polymers.

It is true that Borealis reference does not disclose the elongation properties. However, discovering additional advantages of otherwise obvious compositions is not tantamount to a patentable invention. In addition, it is noted that the illustrative examples of the instant invention while disclosing tensile strength, tear strength and WVRT properties, does not disclose any elongation properties, much less unexpectedly improved elongation properties.

Arguments regarding the alternative rejection with Borealis as the primary reference are notable absent from the applicants remarks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Irina S. Zemel/  
Primary Examiner, Art Unit 1796

Irina S. Zemel  
Primary Examiner  
Art Unit 1796

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